

INDEPENDENT REVIEW PANEL
STAFF RECOMMENDATION TO THE PANEL

January 23, 2003

Complaint: 2001.152

Complainant: Anthony Russ

Accused Party: Miami-Dade Police Department (MDPD), Officers Enrique Sanchez, Ruben Oro, Richard Gray and Jorge Travieso. Also, Sergeants James Tietz and Ed Camacho.

Date Complaint Received: June 12, 2001

Materials Reviewed: Grievance Report Form, Correspondence, Staff Notes, Departmental Responses, Depositions and documents provided by Anthony Russ.

Complaint: Anthony Russ was arrested twice within a six-week period and alleges excessive use of force.

January 14, 2000: Arrested by Officers Enrique Sanchez and Ruben Oro. He was charged with Resisting with Violence, Battery on a Law Enforcement Officer, and Possession of Cocaine (under). Mr. Russ described the January arrest as follows:

He was in the parking lot near SW 102 Avenue and 173 Street, when a police car stopped and he heard one of the officers call him to the car. As Mr. Russ was patting his pockets for his wallet, the two officers exited their car and grabbed him, one on each arm. Mr. Russ stated he asked what was going on because "I knew I didn't comment or do any crimes, and I didn't have a warrant out on me." The officers ordered Mr. Russ to put his hands behind his back, but he refused because the officers had not told him what he did wrong. At this point, Officer Enrique Sanchez began hitting him with his expandable baton, knocking him to the ground. Mr. Russ stated Officer Sanchez "hit me on my arms, hands, back, legs and on the top of my head. I was hit numerous times on my arms which caused my right arm to be broken." The officers handcuffed Mr. Russ, with his hands behind his back, and placed him in the police vehicle. They drove to the Busway where Fire Rescue met them. Fire Rescue put his arm in a sling and told the officers to take him to Ward D. The officers drove to Station 4 where he sat in the police vehicle about 1 ½ hours while the officers wrote their report.

February 23, 2000: Arrested by Officers Enrique Sanchez, Jorge Travieso and Richard Gray. He was charged with Resisting with Violence and Battery on a Law Enforcement Officer. Mr. Russ described the February arrest as follows:

At approximately 3:50 AM, Mr. Russ was riding his bicycle in the vicinity of SW 107 Avenue and 179 Street with a friend. Mr. Russ noticed a patrol car following him from a short distance with its headlights off. Then another patrol car swerved in front of him, blocking his path. Officers Richard Gray and Jorge Travieso exited their vehicle. Mr. Russ heard Officer Gray say: "This is the guy we've been looking for." Mr. Russ contends that Officer Gray proceeded to strike him in the head with something hard, causing him to fall to the ground. Officer Gray then allegedly stood on Mr. Russ' head while Officer Sanchez struck Mr. Russ repeatedly on the ankle "so that the injury would not show." Officers Gray and Travieso handcuffed Mr. Russ, placing his hands behind his back and directing him to Officer Sanchez' patrol car.

Metro-Dade Fire Rescue paramedics arrived, providing Mr. Russ with first aid for a laceration in the area of his left eye. Officer Sanchez then transported Mr. Russ to the Cutler Ridge Station. Mr. Russ reported that he sat in the back of the patrol car for approximately one hour, after which he was transported to Jackson Memorial Hospital Ward D for treatment.

Mr. Russ was incarcerated for 16 months. During that time he attempted to file a complaint about the beating on January 14, 2000. Mr. Russ stated that Internal Affairs Sergeants Tietz and Camacho visited him in jail, but told him there was nothing they could do.

Mr. Russ alleges that:

1. Officer Enrique Sanchez used excessive force on January 14, 2000 when he hit Anthony Russ several times with his expandable baton, breaking Mr. Russ' arm.
2. Officers Sanchez and Ruben Oro caused Mr. Russ unnecessary pain on January 14, 2000 when they kept him in the police car at the station while they wrote their reports. They did not transport him "directly to Ward D" as written in the Use of Force Report.
3. The big tall officer (possibly) Officer Gray used excessive force on February 23, 2000 when he hit Mr. Russ on the head with a hard object.
4. Officer Sanchez used excessive force on February 23, 2000 when he repeatedly struck Mr. Russ on the ankle while Mr. Russ was lying on the ground.
5. Although Mr. Russ was injured on February 23, 2000, he was taken to the station and made to wait in the car while the officers wrote their reports, instead of being taken directly to Ward D.
6. Internal Affairs Sergeants James Tietz and Ed Camacho refused to take his complaint about the January 14, 2000 beating.

Staff Note: On June 18, 2001, after being incarcerated for 16 months, Mr. Russ pled guilty to the following charges: Aggravated Battery on a Law Enforcement Officer, Battery on a Law Enforcement Officer and Resisting Arrest with Violence. He was given credit for time served.

Departmental Response – MDPD Investigative Reports IA 2001-0227 and IA 2002-0051: According to the investigations conducted by Sergeant Robert Wilcox, Mr. Russ was involved in three separate incidents:

1. January 14, 2000 – arrested by Officers Enrique Sanchez and Ruben Oro on the charges of Possession of Cocaine and Resisting an Officer With Violence, and cited for Obstructing the Roadway.
2. February 11, 2000 - allegedly battered Officer Ricardo Rodriguez and fled from the scene on foot.
3. February 23, 2000 - arrested by Officers Richard Gray and Jorge Travieso for the above battery (Aggravated Battery on a Law Enforcement Officer) and for Resisting With Violence.

I.A. 2001-0227 (January 14 arrest).

Officers Sanchez and Oro were Exonerated of the allegation that they utilized excessive force when apprehending Mr. Russ on January 14, 2000.

The Internal Affairs statements of Officer Sanchez and Officer Oro are consistent. They were patrolling the “high crime” Perrine area. At about 8 PM, they observed Mr. Russ straddling a bicycle while drinking a beer in the middle of SW 173 Street, near 103 Avenue. Mr. Russ was obstructing traffic. (In his deposition, Officer Sanchez describes the road as “a two lane street, your typical residential roadway.”) The officers exited their vehicle and asked Mr. Russ to put down his beer and bicycle and come over to the car and talk to them. The officers had no reason to believe Mr. Russ “was doing any other type of criminal behavior [other than standing in the roadway obstructing traffic].” The officers “just wanted him to move out of the roadway and have him come over” and talk to them. Officer Sanchez stated that Mr. Russ immediately put his right hand in his pocket, causing “a little concern for our safety.” Mr. Russ refused to show his hands after repeated commands and Officer Sanchez grabbed Mr. Russ’ arm to pull it out. Mr. Russ, in turn, tried to tackle him. Officer Oro grabbed Mr. Russ’ left arm and Officer Sanchez grabbed his expandable baton, ordering Mr. Russ to stop resisting. When Mr. Russ continued, Officer Sanchez began “to strike him in the forearm area like we were taught in the academy.” (It is documented by MDPD’s Physical Skills Unit that the forearm is within the acceptable “strike zone” in situations calling for the use of an expandable baton.)

The officers drove Mr. Russ to the Busway where paramedics placed his right arm in a sling. They drove to the Cutler Ridge to complete paperwork before transporting Mr. Russ to Ward D.

Medical Information

On January 14, 2000, Mr. Russ was admitted to JMH Ward D where he was treated for a “fractured right ulna.”

IA 2002-0051 (February 23, 2000 arrest)

The allegation that Officers Richard Gray, Jorge Travieso and Enrique Sanchez used Excessive Force when they arrested Mr. Russ was Not Sustained because the officers denied the allegation. They stated that “Mr. Russ demonstrated progressive resistance to the officers’ commands during the confrontation and his actions progressed to the point of aggressive physical resistance.”

Mr. Russ was wearing a soft cast on his right forearm when he was arrested.

Officer Sanchez stated he was on routine patrol when he observed Mr. Russ riding his bicycle. He was present when “Mr. Russ committed a Battery on Officer Ricardo Rodriguez the previous week, and officers were looking for him in the Perrine area to place him under arrest.” Officer Sanchez called for assistance and, when he saw Officers Gray and Travieso approaching, he took a position on the next block, which was Mr. Russ’ only means of escape. Officer Sanchez was not involved in the apprehension of Mr. Russ, however he responded to the scene after Mr. Russ was arrested and Mr. Russ was placed in his patrol car.

The statements of Officer Gray and Officer Travieso are consistent. Officer Gray said he “knew Mr. Russ was a career criminal and he was wanted for Battery on a Police Officer from a previous incident with Officers Sanchez and Rodriguez.” After being notified by Officer Sanchez, Officers Gray and Travieso placed their vehicles so as to block Mr. Russ. They exited their vehicles and told Mr. Russ he was under arrest. Officer Travieso stated that Mr. Russ “charged forward and struck him [on his thigh] with the bicycle.” Officer Travieso was not injured “to where you could see bruises on my thigh.” Officer Gray then wrapped his arms around Mr. Russ and both fell to the ground. Mr. Russ hit his head on the sidewalk. When Officer Travieso tried to help Officer Gray control Mr. Russ, Mr. Russ kicked him in the knee, causing a bruise. Mr. Russ hit Officer Gray in the chest with “a backhand [right] arm strike.” Mr. Russ’ right arm was in a soft cast at the time.

Medical Information

On February 23, 2000, Mr. Russ was treated at JMH Ward D “for a scalp laceration, and contusions to his left eye and left ankle.”

Involved Party Backgrounds

Officer Enrique Sanchez: Two prior sustained complaints: Improper Procedure (1998) and Improper Procedure (1999)

Officer Ruben Oro: None

Officer Richard Gray: Three prior sustained complaints: Improper Procedure (1990), Unnecessary Towing (1991), Abuse of Authority (1991)

Officer Jorge Travieso: None

Anthony Russ: The Criminal Justice Information System shows 19 felony arrests and 3 misdemeanor arrests between 1990 and 2002. There are approximately: 50 charges, 19 convictions and 18 charges nolle prossed or no actioned.

Sergeant James Tietz' Professional Compliance Bureau Contact Report indicates that he and Sergeant Camacho met with Mr. Russ at the Dade County Jail on May 31, 2001. "Sergeants Tietz and Camacho explained to Mr. Russ that the officers in question documented the [January 14] incident properly and in the absence of mitigating circumstances, it was clear the officers did not use excessive force... Mr. Russ admitted that he wrote his letter of complaint... believing it would expedite his criminal case."

Staff Remarks: Copies of both Internal Affairs investigations were sent to Mr. Russ on July 22, 2002. In a follow-up telephone conversation, Mr. Russ advised he had not received the reports. They were resent on August 9, 2002, with the request that he respond by August 19, if he wanted to pursue his complaint. Mr. Russ did not request the offered Mediated Fact-finding and Dispute Resolution committee meeting.

Staff Findings Regarding the Allegations:

1. Officer Enrique Sanchez used excessive force on January 14, 2000 when he hit Anthony Russ several times with his expandable baton, breaking Mr. Russ' arm.

NOT SUSTAINED It is a fact that Mr. Russ' right arm was fractured as a result of Officer Sanchez hitting him with his expandable baton. Staff did not find evidence to support the allegation that the use of force was excessive, given testimony that the action taken after resistance conformed to training and policy.

2. Officers Enrique Sanchez and Ruben Oro caused Mr. Russ unnecessary pain on January 14, 2000 when they kept him in the police car at the station while they wrote their reports. They did not transport him "directly to Ward D" as written in the Use of Force Report.

SUSTAINED Although Officer Oro states he does not remember going to the station before transporting Mr. Russ to Ward D, Officer Sanchez stated they drove to the Cutler Ridge station first so the sergeant could prepare the Use of Force report. Sergeant Anthony Christensen, the sergeant who responded to the January 14, 2000 incident, states in his deposition: "I instructed [the officers] to respond to Ward-D, which is normal procedure with an injured prisoner. And when they got back to reach me on the air, and I would write a Use of Force."

The use of the word "directly" in the Use of Force was an error on the part of the supervisor.

3. The big tall officer (possibly) Officer Richard Gray used excessive force on February 23, 2000 when he hit Mr. Russ on the head with a hard object.

NOT SUSTAINED Medical evidence documents that Mr. Russ was treated “for a scalp laceration.” Officer Richard Gray denied hitting Mr. Russ on the head with a hard object. Staff did not find sufficient evidence to determine how Mr. Russ received the scalp laceration, therefore the allegation cannot be sustained.

4. Officer Enrique Sanchez used excessive force on February 23, 2000 when he repeatedly struck Mr. Russ on the ankle while Mr. Russ was lying on the ground.

NOT SUSTAINED Officer Enrique Sanchez denies he was present during the apprehension of Mr. Russ. He arrived on the scene after Mr. Russ was handcuffed, but did transport Mr. Russ to the station.

5. Although Mr. Russ was injured on February 23, 2000, he was taken to the station and made to wait in the car while the officers wrote their reports, instead of being taken directly to Ward D.

EXONERATED The available evidence does not indicate that serious injury requiring immediate medical attention was evident at the time of arrest. Staff did not find policy that addresses whether or not an injured prisoner must be transported from the scene directly to Ward D.

The policy (18-02.III.M), which addresses injured prisoners states:

...Fire Rescue shall be requested for any prisoner who displays evidence of, or complains of, an injury or illness... The prisoner shall be transported to Jackson Memorial Hospital (JMH) Ward D for examination and treatment...

The policy (18-02.III.M), which addresses use of force reporting, states:

The involved officer(s) shall ... request that his supervisor respond.... [A supervisor] will respond and prepare the SRUFC [Supervisor’s Report of Use of Force to Control].”

6. Internal Affairs Sergeants James Tietz and Ed Camacho refused to take his complaint about the January 14, 2000 beating.

NOT SUSTAINED Sergeant Tietz went beyond his responsibilities as an Internal Affairs investigator when he concluded during his interview with Mr. Russ that the actions of Officers Sanchez and Oro on January 14, 2000 “appear to be justified and delivered at the appropriate level.” However, he did document Mr. Russ’ complaint and advised the complainant to pursue his grievance through the court and the Public Defender’s Office.

Other Staff Findings

1. The attempt to question a citizen about obstructing a roadway escalated to a physical altercation that resulted in the complainant being charged with three felonies and receiving a broken arm, after the officers' initiated physical contact due to fear for officer safety.
2. Officers Sanchez and Oro had reason to be concerned for their safety on January 14, 2000. It was dark; the street lighting was poor; it was a high crime area; Mr. Russ is a big man, weighing 210 –280 lbs and measuring about 5'10"; he was uncooperative, refusing to show his hands.
3. There are conflicting statements about Mr. Russ' position when Officers Sanchez and Oro saw him.

In their Internal Affairs statements both officers report Mr. Russ was in the middle of the road, obstructing traffic.

In his deposition, Officer Oro states: I observed the defendant standing in the middle of the street." Later, in the same deposition he states: "[Mr. Russ] was on the side but still on the street on the right hand side." When asked if Mr. Russ was blocking any cars, he responds: "He was blocking our road." When asked if he ever told Mr. Russ to get out of the road, Officer Oro responds: "Never got a chance to."

In his deposition, Officer Sanchez states: "[Mr. Russ] was in the middle of the roadway." When asked if Mr. Russ was blocking traffic, he responds:

A: Yes. We had to stop for him.

Q: So you couldn't get your vehicle past him?

A: But I would have to come in the westbound lane to get around him.

Q: he was in the west bound lane?

A: Yes.

4. According to the accounts of Officers Enrique Sanchez, Ruben Oro, Richard Gray, Jorge Travieso and Ricardo Rodriguez, Anthony Russ fled, or attempted to flee, in each of the three incidents.
5. Sgt. Robert Wilcox frames some questions in a manner that appear to lead the accused officers to respond with answers to justify their actions.
 - a. He leads Officer Sanchez to the "fear for my life" response that justifies use of force.

Q: When you decided to take aggressive action because you were in fear for your life, what did you do?

A: Well it wasn't an aggressive move. What it was was I went to grab Mr. Russ by one of his arms...

Q: What happened next? [After grabbing Mr. Russ in a bear hug.]

A: Sanchez confronted him and—we were basically dancing with Mr. Russ... until I could perform a leg sweep and take him to the ground....

Q: Did, at any time, he attempt to overpower you?

A: Yes.

Q: Okay. And were you becoming more afraid for your safety as this was transpiring?

A: Absolutely.

Q: Okay. Was your gun exposed to Mr. Russ at any time?

A: Again, this is a struggle. My gun could have been exposed.

Q: He was trying to get his hand back in there [pockets]?

A: Correct.

Q: For reasons that put you in fear?

A: Exactly.

b. He leads Officer Gray to the 'officer safety' response that justifies use of force.

Q: He didn't try to break his fall going down?

A: I had him wrapped around. I had him wrapped.

Q: So you performed a tactical-type of maneuver, wrapping your arms around him to take him to the ground?

A: Yes.

Q: Okay. Your purpose was to inhibit him from injuring Officer Travieso some more?

A: Yeah, to continue to keep him from getting away.

- c. He asks Officer Gray to speculate about what could have occurred, leading him to confirm that only necessary force was used.

Q: What do you think Mr. Russ would have done if you hadn't have used force to take him into custody?

A: I think he would have used the bike as a further weapon against Officer Travieso and escaped.

Q: Do you think you would have been injured if you didn't use the amount of force necessary?

A: Yes.

Staff Recommendations Relating to the Incidents and IA Investigations.

1. That MDPD clarify when a complaint investigator may conclude that alleged excessive use of force has not occurred, instead of leaving the judgment to a disposition panel.
2. That the MDPD Professional Compliance Bureau review the line of questioning identified in Finding #5, and determine whether or not this approach complies with procedures for taking statements from involved officers.

Staff Recommendations for Improving Police/Community Relations:

1. Citizens need to know they can impact an officer's response to them. Keeping one's hands visible, whether or not commanded to do so, reduces officers concerns for their personal safety and allows them to focus on the purpose for engaging the citizen.
2. Citizens need to know that the law allows officers to detain and question citizens, even though they are not breaking any law.
3. Justifying the actions of accused officers to a citizen, while that citizen is attempting to file a complaint, reinforces the perception of some citizens that "officers protect their own," and "Internal Affairs investigations are not objective."

DISPOSITION OF THE INDEPENDENT REVIEW PANEL

Complainant: Anthony Russ

Date: January 28, 2003

IRP Case: A 2001.152

From: Eduardo I. Diaz, Ph.D.
Executive director

The Independent Review Panel met on January 23, 2003 for the purpose of publicly reviewing the complaint made by Anthony Russ against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel:

A. Allegations

1. Officer Enrique Sanchez used excessive force on January 14, 2000 when he hit Anthony Russ several times with his expandable baton, breaking Mr. Russ' arm.
2. Officers Sanchez and Ruben Oro caused Mr. Russ unnecessary pain on January 14, 2000 when they kept him in the police car at the station while they wrote their reports. They did not transport him "directly to Ward D" as written in the Use of Force Report.
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6. Internal Affairs Sergeants James Tietz and Ed Camacho refused to take his complaint about the January 14, 2000 beating.

B. Disposition of the Independent Review Panel

1. Officer Enrique Sanchez used excessive force on January 14, 2000 when he hit Anthony Russ several times with his expandable baton, breaking Mr. Russ' arm.

NOT SUSTAINED It is a fact that Mr. Russ' right arm was fractured as a result of Officer Sanchez hitting him with his expandable baton. Staff did not find evidence to support the allegation that the use of force was excessive, given testimony that the action taken after resistance conformed to training and policy.

2. Officers Enrique Sanchez and Ruben Oro caused Mr. Russ unnecessary pain on January 14, 2000 when they kept him in the police car at the station while they wrote their reports. They did not transport him "directly to Ward D" as written in the Use of Force Report.

EXONERATED Although Officer Oro states he does not remember going to the station before transporting Mr. Russ to Ward D, Officer Sanchez stated they drove to the Cutler Ridge station first so the sergeant could prepare the Use of Force report. Sergeant Anthony Christensen, the sergeant who responded to the January 14, 2000 incident, states in his deposition: "I instructed [the officers] to respond to Ward-D, which is normal procedure with an injured prisoner. And when they got back to reach me on the air, and I would write a Use of Force."

Ward D records indicate Mr. Russ was giving consent to treatment at 9 PM, one hour after being treated by Fire Rescue, supporting the conclusion he was taken directly to Ward. D.

3. The big tall officer (possibly) Officer Richard Gray used excessive force on February 23, 2000 when he hit Mr. Russ on the head with a hard object.

NOT SUSTAINED Medical evidence documents that Mr. Russ was treated "for a scalp laceration." Officer Richard Gray denied hitting Mr. Russ on the head with a hard object.

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C. Other Findings

1. The attempt to question a citizen about obstructing a roadway escalated to a physical altercation that resulted in the complainant being charged with three felonies and receiving a broken arm, after the officers' initiated physical contact due to fear for officer safety.
2. Officers Sanchez and Oro had reason to be concerned for their safety on January 14, 2000. It was dark; the street lighting was poor; it was a high crime area; Mr. Russ is a big man, weighing 210 –280 lbs and measuring about 5'10"; he was uncooperative, refusing to show his hands.
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5. Sgt. Robert Wilcox frames some questions in a manner that appear to lead the accused officers to respond with answers to justify their actions.

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Q: What happened next? [After grabbing Mr. Russ in a bear hug.]

A: Sanchez confronted him and—we were basically dancing with Mr. Russ... until I could perform a leg sweep and take him to the ground....

Q: Did, at any time, he attempt to overpower you?

A: Yes.

Q: Okay. And were you becoming more afraid for your safety as this was transpiring?

A: Absolutely.

Q: Okay. Was your gun exposed to Mr. Russ at any time?

A: Again, this is a struggle. My gun could have been exposed.

Q: He was trying to get his hand back in there [pockets]?

A: Correct.

Q: For reasons that put you in fear?

A: Exactly.

- b. He leads Officer Gray to the ‘officer safety’ response that justifies use of force.

Q: He didn’t try to break his fall going down?

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Q: Okay. Your purpose was to inhibit him from injuring Officer Travieso some more?

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A: I think he would have used the bike as a further weapon against Officer Travieso and escaped.

Q: Do you think you would have been injured if you didn't use the amount of force necessary?

A: Yes.

D. Recommendations

1. That MDPD clarify when a complaint investigator may conclude that alleged excessive use of force has not occurred, instead of leaving the judgment to a disposition panel.
2. That the MDPD Professional Compliance Bureau review the line of questioning identified in Finding #5, and determine whether or not this approach complies with procedures for taking statements from involved officers.

E. Recommendations for Improving Police/Community Relations

1. Citizens need to know they can impact an officer's response to them. Keeping one's hands visible, whether or not commanded to do so, reduces officers concerns for their personal safety and allows them to focus on the purpose for engaging the citizen.
2. Citizens need to know that the law allows officers to approach and question citizens, even though they are not breaking any law.
3. Citizens need to know that the law allows officers to stop, and temporarily detain for questioning, citizens as long as the officers have reasonable suspicion that "such person has committed, is committing, or is about to commit a criminal offense."
4. Justifying the actions of accused officers to a citizen, while that citizen is attempting to file a complaint, reinforces the perception of some citizens that "officers protect their own," and "Internal Affairs investigations are not objective."

The Independent Review Panel concluded the complaint on January 23, 2003.